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14
15 UNITED STATES DISTRICT COURT
16 SOUTHERN DISTRICT OF CALIFORNIA

17 **Scott Schutza,**

18 Plaintiff,

19 v.

20 **Kaiser Foundation Hospitals,**
21 **LLC**, a California Corporation;
22 **Mission Trails, LLC**, a Delaware
23 Limited Liability Company;
24 **Velimir Petakovich**, in his capacity
25 as Trustee;
26 **Ljubinka Petakovich**, in her
27 capacity as Trustee;
28 **Kaiser Foundation Health Plan,**
29 **Inc.**, a California Corporation;
30 and Does 1-10,

31 Defendants.

32 **Case No. 3:16-CV-00482-L-JMA**

33
34 **First Amended Complaint For**
35 **Damages And Injunctive Relief**
36 **For Violations Of: American's With**
37 **Disabilities Act; Unruh Civil Rights**
38 **Act**

39 Plaintiff Scott Schutza complains of Defendants Kaiser Foundation
40 Hospitals, LLC; Mission Trails, LLC; Velimir Petakovich; Ljubinka
41 Petakovich; Kaiser Foundation Health Plan, Inc.; and Does 1-10
42 (“Defendants”) and alleges as follows:

43
44 **PARTIES:**

45 1. Plaintiff is a California resident with physical disabilities. He is a

1 paraplegic who cannot walk and who uses a wheelchair for mobility.

2 2. In February 2014, Defendant Kaiser Foundation Hospitals was the real
3 property owner of the building/parcel located at or about 4405 Vandever
4 Avenue, San Diego, California.

5 3. In March 2014, Defendant Kaiser Foundation Hospitals was the real
6 property owner of the building/parcel located at or about 4405 Vandever
7 Avenue, San Diego, California.

8 4. In April 2014, Defendant Kaiser Foundation Hospitals was the real
9 property owner of the building/parcel located at or about 4405 Vandever
10 Avenue, San Diego, California.

11 5. In May 2014, Defendant Kaiser Foundation Hospitals was the real
12 property owner of the building/parcel located at or about 4405 Vandever
13 Avenue, San Diego, California.

14 6. In June 2014, Defendant Kaiser Foundation Hospitals was the real
15 property owner of the building/parcel located at or about 4405 Vandever
16 Avenue, San Diego, California.

17 7. In July 2014, Defendant Kaiser Foundation Hospitals was the real
18 property owner of the building/parcel located at or about 4405 Vandever
19 Avenue, San Diego, California.

20 8. In August 2014, Defendant Kaiser Foundation Hospitals was the real
21 property owner of the building/parcel located at or about 4405 Vandever
22 Avenue, San Diego, California.

23 9. In September 2014, Defendant Kaiser Foundation Hospitals was the
24 real property owner of the building/parcel located at or about 4405 Vandever
25 Avenue, San Diego, California.

26 10. In October 2014, Defendant Kaiser Foundation Hospitals was the real
27 property owner of the building/parcel located at or about 4405 Vandever
28 Avenue, San Diego, California.

1 11. In November 2014, Defendant Kaiser Foundation Hospitals was the
2 real property owner of the building/parcel located at or about 4405 Vandever
3 Avenue, San Diego, California.

4 12. In December 2014, Defendant Kaiser Foundation Hospitals was the
5 real property owner of the building/parcel located at or about 4405 Vandever
6 Avenue, San Diego, California.

7 13. Defendant Kaiser Foundation Hospitals is the current real property
8 owner of the building/parcel located at or about 4405 Vandever Avenue, San
9 Diego, California.

10 14. In April 2014, Defendant Kaiser Foundation Hospitals was the real
11 property owner of the building/parcel located at or about 4647 Zion Avenue,
12 San Diego, California.

13 15. In May 2014, Defendant Kaiser Foundation Hospitals was the real
14 property owner of the building/parcel located at or about 4647 Zion Avenue,
15 San Diego, California.

16 16. Defendant Kaiser Foundation Hospitals is the current real property
17 owner of the building/parcel located at or about 4647 Zion Ave, San Diego,
18 California.

19 17. In April 2014, Defendant Mission Trails, LLC was the real property
20 owner of the building/parcel located at or about 7385 Mission Gorge
21 Avenue, San Diego, California.

22 18. In November 2014, Defendant Mission Trails, LLC was the real
23 property owner of the building/parcel located at or about 7385 Mission
24 Gorge Avenue, San Diego, California.

25 19. In December 2014, Defendant Mission Trails, LLC was the real
26 property owner of the building/parcel located at or about 7385 Mission
27 Gorge Avenue, San Diego, California.

28 20. Defendant Mission Trails, LLC is the current real property owner of

1 the building/parcel located at or about 7385 Mission Gorge Avenue, San
2 Diego, California.

3 21. In February 2015, Defendant Velimir Petakovich was a real property
4 owner of the building/parcel located at or about 4510 Viewridge Avenue,
5 San Diego, California.

6 22. In March 2015, Defendant Velimir Petakovich was a real property
7 owner of the building/parcel located at or about 4510 Viewridge Avenue,
8 San Diego, California.

9 23. In April 2015, Defendant Velimir Petakovich was a real property owner
10 of the building/parcel located at or about 4510 Viewridge Avenue,
11 San Diego, California.

12 24. In May 2015, Defendant Velimir Petakovich was a real property owner
13 of the building/parcel located at or about 4510 Viewridge Avenue, San
14 Diego, California.

15 25. In August 2015, Defendant Velimir Petakovich was a real property owner
16 of the building/parcel located at or about 4510 Viewridge Avenue,
17 San Diego, California.

18 26. In September 2015, Defendant Velimir Petakovich was a real property
19 owner of the building/parcel located at or about 4510 Viewridge Avenue,
20 San Diego, California.

21 27. In October 2015, Defendant Velimir Petakovich was a real property
22 owner of the building/parcel located at or about 4510 Viewridge Avenue,
23 San Diego, California.

24 28. In December 2015, Defendant Velimir Petakovich was a real property
25 owner of the building/parcel located at or about 4510 Viewridge Avenue,
26 San Diego, California.

27 29. In January 2016, Defendant Velimir Petakovich was a real property
28 owner of the building/parcel located at or about 4510 Viewridge Avenue,

1 San Diego, California.

2 30. In March 2016, Defendant Velimir Petakovich was a real property
3 owner of the building/parcel located at or about 4510 Viewridge Avenue,
4 San Diego, California.

5 31. Defendant Velimir Petakovich is a current real property owner of the
6 building/parcel located at or about 4510 Viewridge Avenue, San Diego,
7 California.

8 32. In February 2015, Defendant Ljubinka Petakovich was a real property
9 owner of the building/parcel located at or about 4510 Viewridge Avenue,
10 San Diego, California.

11 33. In March 2015, Defendant Ljubinka Petakovich was a real property
12 owner of the building/parcel located at or about 4510 Viewridge Avenue,
13 San Diego, California.

14 34. In April 2015, Defendant Ljubinka Petakovich was a real property
15 owner of the building/parcel located at or about 4510 Viewridge Avenue,
16 San Diego, California.

17 35. In May 2015, Defendant Ljubinka Petakovich was a real property
18 owner of the building/parcel located at or about 4510 Viewridge Avenue,
19 San Diego, California.

20 36. In August 2015, Defendant Ljubinka Petakovich was a real property
21 owner of the building/parcel located at or about 4510 Viewridge Avenue,
22 San Diego, California.

23 37. In September 2015, Defendant Ljubinka Petakovich was a real property
24 owner of the building/parcel located at or about 4510 Viewridge Avenue,
25 San Diego, California.

26 38. In October 2015, Defendant Ljubinka Petakovich was a real property
27 owner of the building/parcel located at or about 4510 Viewridge Avenue,
28 San Diego, California.

1 39. In December 2015, Defendant Ljubinka Petakovich was a real
2 property owner of the building/parcel located at or about 4510 Viewridge
3 Avenue, San Diego, California.

4 40. In January 2016, Defendant Ljubinka Petakovich was a real property
5 owner of the building/parcel located at or about 4510 Viewridge Avenue,
6 San Diego, California.

7 41. In March 2016, Defendant Ljubinka Petakovich was a real property
8 owner of the building/parcel located at or about 4510 Viewridge Avenue,
9 San Diego, California.

10 42. Defendant Ljubinka Petakovich is a current real property owner of the
11 building/parcel located at or about 4510 Viewridge Avenue, San Diego,
12 California.

13 43. In February 2014, Defendant Kaiser Foundation Hospitals was the
14 business owner of the Kaiser Permanente Medical Offices located at or about
15 4405 Vandever Avenue, San Diego, California (“Kaiser Vandever”).

16 44. In March 2014, Defendant Kaiser Foundation Hospitals was the
17 business owner of Kaiser Vandever.

18 45. In April 2014, Defendant Kaiser Foundation Hospitals was the
19 business owner of Kaiser Vandever.

20 46. In May 2014, Defendant Kaiser Foundation Hospitals was the
21 business owner of Kaiser Vandever.

22 47. In June 2014, Defendant Kaiser Foundation Hospitals was the
23 business owner of Kaiser Vandever.

24 48. In July 2014, Defendant Kaiser Foundation Hospitals was the business
25 owner of Kaiser Vandever.

26 49. In August 2014, Defendant Kaiser Foundation Hospitals was the
27 business owner of Kaiser Vandever.

28 50. In September 2014, Defendant Kaiser Foundation Hospitals was the

1 business owner of Kaiser Vandever.

2 51. In October 2014, Defendant Kaiser Foundation Hospitals was the
3 business owner of Kaiser Vandever.

4 52. In November 2014, Defendant Kaiser Foundation Hospitals was the
5 business owner of Kaiser Vandever.

6 53. In December 2014, Defendant Kaiser Foundation Hospitals was the
7 business owner of Kaiser Vandever.

8 54. Defendant Kaiser Foundation Hospitals is the current business owner
9 of Kaiser Vandever.

10 55. In April 2014, Defendant Kaiser Foundation Hospitals was the
11 business owner of the Kaiser Permanente Medical Center, located at or about
12 4647 Zion Ave, San Diego, California (“Kaiser Zion”).

13 56. In May 2014, Defendant Kaiser Foundation Hospitals was the
14 business owner of Kaiser Zion.

15 57. Defendant Kaiser Foundation Hospitals is the current business owner
16 of Kaiser Zion.

17 58. In April 2014, Defendant Kaiser Foundation Hospitals was the
18 business owner of the Kaiser Permanente Medical Offices located at or about
19 7385 Mission Gorge Avenue, San Diego, California (“Kaiser Mission
20 Gorge”).

21 59. In November 2014, Defendant Kaiser Foundation Hospitals was the
22 business owner of Kaiser Mission Gorge.

23 60. In December 2014, Defendant Kaiser Foundation Hospitals was the
24 business owner of Kaiser Mission Gorge.

25 61. Defendant Kaiser Foundation Hospitals is the current business owner
26 of Kaiser Mission Gorge.

27 62. In February 2015, Defendant Kaiser Foundation Health Plan, Inc. was
28 the business owner of the Kaiser Permanente Kearny Mesa Rehabilitation

1 Center, located at or about 4510 Viewridge Avenue, San Diego, California
2 (“Kaiser Viewridge”).

3 63. In March 2015, Defendant Kaiser Foundation Health Plan, Inc. was
4 the business owner of Kaiser Viewridge.

5 64. In April 2015, Defendant Kaiser Foundation Health Plan, Inc. was the
6 business owner of Kaiser Viewridge.

7 65. In May 2015, Defendant Kaiser Foundation Health Plan, Inc. was the
8 business owner of Kaiser Viewridge.

9 66. In August 2015, Defendant Kaiser Foundation Health Plan, Inc. was
10 the business owner of Kaiser Viewridge.

11 67. In September 2015, Defendant Kaiser Foundation Health Plan, Inc.
12 was the business owner of Kaiser Viewridge.

13 68. In October 2015, Defendant Kaiser Foundation Health Plan, Inc. was
14 the business owner of Kaiser Viewridge.

15 69. In December 2015, Defendant Kaiser Foundation Health Plan, Inc.
16 was the business owner of Kaiser Viewridge.

17 70. In January 2016, Defendant Kaiser Foundation Health Plan, Inc. was
18 the business owner of Kaiser Viewridge.

19 71. In March 2016, Defendant Kaiser Foundation Health Plan, Inc. was
20 the business owner of Kaiser Viewridge.

21 72. Defendant Kaiser Foundation Health Plan, Inc. is the current business
22 owner of Kaiser Viewridge.

23 73. Plaintiff does not know the true names of Defendants, their business
24 capacities, their ownership connection to the property and business, or their
25 relative responsibilities in causing the access violations herein complained of,
26 and alleges a joint venture and common enterprise by all such Defendants.
27 Plaintiff is informed and believes that each of the Defendants herein,
28 including Does 1 through 10, inclusive, is responsible in some capacity for

1 the events herein alleged, or is a necessary party for obtaining appropriate
2 relief. Plaintiff will seek leave to amend when the true names, capacities,
3 connections, and responsibilities of the Defendants and Does 1 through 10,
4 inclusive, are ascertained.

5

6 **JURISDICTION & VENUE:**

7 74. This Court has subject matter jurisdiction over this action pursuant to
8 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
9 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

10 75. Pursuant to supplemental jurisdiction, an attendant and related cause
11 of action, arising from the same nucleus of operative facts and arising out of
12 the same transactions, is also brought under California's Unruh Civil Rights
13 Act, which act expressly incorporates the Americans with Disabilities Act.

14 76. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
15 founded on the fact that the real property which is the subject of this action is
16 located in this district and that Plaintiff's cause of action arose in this district.

17

18 **FACTUAL ALLEGATIONS:**

19 77. Kaiser Vandever is a facility open to the public, a business
20 establishment and a place of public accommodation.

21 78. Transaction counters are one of the facilities, privileges and
22 advantages offered by Defendants to patrons of Kaiser Vandever.

23 79. In February 2014, there was a lowered transaction counter in the
24 pharmacy, but Defendants had a practice of not staffing the counter such that
25 it remained opened and usable by persons with disabilities.

26 80. In March 2014, there was a lowered transaction counter in the
27 pharmacy, but Defendants had a practice of not staffing the counter such that
28 it remained opened and usable by persons with disabilities.

1 81. In April 2014, there was a lowered transaction counter in the
2 pharmacy, but Defendants had a practice of not staffing the counter such that
3 it remained opened and usable by persons with disabilities.

4 82. In May 2014, there was a lowered transaction counter in the
5 pharmacy, but Defendants had a practice of not staffing the counter such that
6 it remained opened and usable by persons with disabilities.

7 83. In June 2014, there was a lowered transaction counter in the
8 pharmacy, but Defendants had a practice of not staffing the counter such that
9 it remained opened and usable by persons with disabilities.

10 84. In July 2014, there was a lowered transaction counter in the pharmacy,
11 but Defendants had a practice of not staffing the counter such that it
12 remained opened and usable by persons with disabilities.

13 85. In August 2014, there was a lowered transaction counter in the
14 pharmacy, but Defendants had a practice of not staffing the counter such that
15 it remained opened and usable by persons with disabilities.

16 86. In September 2014, there was a lowered transaction counter in the
17 pharmacy, but Defendants had a practice of not staffing the counter such that
18 it remained opened and usable by persons with disabilities.

19 87. In October 2014, there was a lowered transaction counter in the
20 pharmacy, but Defendants had a practice of not staffing the counter such that
21 it remained opened and usable by persons with disabilities.

22 88. In November 2014, there was a lowered transaction counter in the
23 pharmacy, but Defendants had a practice of not staffing the counter such that
24 it remained opened and usable by persons with disabilities.

25 89. In December 2014, there was a lowered transaction counter in the
26 pharmacy, but Defendants had a practice of not staffing the counter such that
27 it remained opened and usable by persons with disabilities.

28 90. Currently, there is a lowered transaction counter in the pharmacy, but

1 Defendants have a practice of not staffing the counter such that it remains
2 open and usable by persons with disabilities.

3 91. Kaiser Zion is a facility open to the public, a business establishment
4 and a place of public accommodation.

5 92. Parking spaces are one of the facilities, privileges and advantages
6 offered by Defendants to patrons of Kaiser Zion.

7 93. Unfortunately, the parking lot serving Kaiser Zion is not accessible to
8 persons with disabilities.

9 94. In April 2014, Defendants failed to maintain the parking spaces
10 marked and reserved for persons with disabilities in compliance with the
11 Americans with Disabilities Act Accessibility Guidelines (ADAAG).

12 95. In April 2014, many of the parking spaces marked and reserved for
13 persons with disabilities at Kaiser Zion had cross slopes greater than 2%.

14 96. In April 2014, many of the parking spaces marked and reserved for
15 persons with disabilities at Kaiser Zion did not have the required tow-away
16 signage.

17 97. In May 2014, Defendants failed to maintain the parking spaces
18 marked and reserved for persons with disabilities in compliance with the
19 ADAAG.

20 98. In May 2014, many of the parking spaces marked and reserved for
21 persons with disabilities at Kaiser Zion had cross slopes greater than 2%.

22 99. In May 2014, many of the parking spaces marked and reserved for
23 persons with disabilities at Kaiser Zion did not have the required tow-away
24 signage.

25 100. Currently, Defendants have failed to maintain the parking
26 spaces marked and reserved for persons with disabilities in compliance with
27 the ADAAG.

28 101. Currently, many of the parking spaces marked and reserved for

1 persons with disabilities at Kaiser Zion have cross slopes greater than 2%.

2 102. Currently, many of the parking spaces marked and reserved for
3 persons with disabilities at Kaiser Zion do not have the required tow-away
4 signage.

5 103. Transaction counters are another one of the facilities, privileges
6 and advantages offered by Defendants to patrons of Kaiser Zion.

7 104. In April 2014, Defendants offered a disabled persons window in
8 the pharmacy, but there was no lowered, 36-inch or lower transaction
9 counter available for disabled patrons to conduct business.

10 105. In April 2014, Defendants had a practice of not staffing the
11 window such that it remained opened and usable by persons with disabilities.

12 106. In April 2014, a disabled patron wishing to use this window was
13 forced to push a call button many times and simply wait for a staff member to
14 arrive.

15 107. In May 2014, Defendants offered a disabled persons window in
16 the pharmacy, but there was no lowered, 36-inch or lower transaction
17 counter available for disabled patrons to conduct business.

18 108. In May 2014, Defendants had a practice of not staffing the
19 window such that it remained opened and usable by persons with disabilities.

20 109. In May 2014, a disabled patron wishing to use this window was
21 forced to push a call button many times and simply wait for a staff member to
22 arrive.

23 110. Currently, Defendants offer a disabled persons window in the
24 pharmacy, but there is no lowered, 36-inch or lower transaction counter
25 available for disabled patrons to conduct business.

26 111. Currently, Defendants have a practice of not staffing the
27 window such that it remains open and usable by persons with disabilities.

28 112. Currently, a disabled patron wishing to use this window is forced

1 to push a call button many times and simply wait for a staff member to arrive.

2 113. Kaiser Mission Gorge is a facility open to the public, a business
3 establishment and a place of public accommodation.

4 114. Parking spaces are one of the facilities, privileges and
5 advantages offered by Defendants to patrons of Kaiser Mission Gorge.

6 115. Unfortunately, the parking lot serving Kaiser Mission Gorge is
7 not accessible to persons with disabilities.

8 116. In April 2014, Defendants failed to maintain the parking spaces
9 marked and reserved for persons with disabilities in compliance with the
10 ADAAG.

11 117. In April 2014, many of the parking spaces marked and reserved
12 for persons with disabilities on the west side of the Kaiser Mission Gorge
13 facility had cross slopes greater than 2%.

14 118. In November 2014, Defendants failed to maintain the parking
15 spaces marked and reserved for persons with disabilities in compliance with
16 the ADAAG.

17 119. In November 2014, many of the parking spaces marked and
18 reserved for persons with disabilities on the west side of the Kaiser Mission
19 Gorge facility had cross slopes greater than 2%.

20 120. In December 2014, Defendants failed to maintain the parking
21 spaces marked and reserved for persons with disabilities in compliance with
22 the ADAAG.

23 121. In December 2014, many of the parking spaces marked and
24 reserved for persons with disabilities on the west side of the Kaiser Mission
25 Gorge facility had cross slopes greater than 2%.

26 122. Currently, Defendants have failed to maintain the parking
27 spaces marked and reserved for persons with disabilities in compliance with
28 the ADAAG.

1 123. Currently, many of the parking spaces marked and reserved for
2 persons with disabilities on the west side of the Kaiser Mission Gorge facility
3 have cross slopes greater than 2%.

4 124. Kaiser Viewridge is a facility open to the public, a business
5 establishment and a place of public accommodation.

6 125. Parking spaces are one of the facilities, privileges and
7 advantages offered by Defendants to patrons of Kaiser Viewridge.

8 126. Unfortunately, the parking lot serving Kaiser Viewridge is not
9 accessible to persons with disabilities.

10 127. In February 2015, Defendants failed to maintain the parking
11 spaces marked and reserved for persons with disabilities in compliance with
12 the ADAAG.

13 128. In February 2015, many of the parking spaces marked and
14 reserved for persons with disabilities at Kaiser Viewridge had cross slopes
15 greater than 2%.

16 129. In February 2015, many of the access aisles at Kaiser Viewridge
17 had cross slopes greater than 2%.

18 130. In February 2015, some of the access aisles at Kaiser Viewridge
19 had curb ramps running into them, causing running slopes greater than 2%.

20 131. In March 2015, Defendants failed to maintain the parking
21 spaces marked and reserved for persons with disabilities in compliance with
22 the ADAAG.

23 132. In March 2015, many of the parking spaces marked and
24 reserved for persons with disabilities at Kaiser Viewridge had cross slopes
25 greater than 2%.

26 133. In March 2015, many of the access aisles at Kaiser Viewridge
27 had cross slopes greater than 2%.

28 134. In March 2015, some of the access aisles at Kaiser Viewridge

1 had curb ramps running into them, causing running slopes greater than 2%.

2 135. In April 2015, Defendants failed to maintain the parking spaces
3 marked and reserved for persons with disabilities in compliance with the
4 ADAAG.

5 136. In April 2015, many of the parking spaces marked and reserved
6 for persons with disabilities at Kaiser Viewridge had cross slopes greater than
7 2%.

8 137. In April 2015, many of the access aisles at Kaiser Viewridge had
9 cross slopes greater than 2%.

10 138. In April 2015, some of the access aisles at Kaiser Viewridge had
11 curb ramps running into them, causing running slopes greater than 2%.

12 139. In May 2015, Defendants failed to maintain the parking spaces
13 marked and reserved for persons with disabilities in compliance with the
14 ADAAG.

15 140. In May 2015, many of the parking spaces marked and reserved
16 for persons with disabilities at Kaiser Viewridge had cross slopes greater than
17 2%.

18 141. In May 2015, many of the access aisles at Kaiser Viewridge had
19 cross slopes greater than 2%.

20 142. In May 2015, some of the access aisles at Kaiser Viewridge had
21 curb ramps running into them, causing running slopes greater than 2%.

22 143. In August 2015, Defendants failed to maintain the parking
23 spaces marked and reserved for persons with disabilities in compliance with
24 the ADAAG.

25 144. In August 2015, many of the parking spaces marked and
26 reserved for persons with disabilities at Kaiser Viewridge had cross slopes
27 greater than 2%.

28 145. In August 2015, many of the access aisles at Kaiser Viewridge

1 had cross slopes greater than 2%.

2 146. In August 2015, some of the access aisles at Kaiser Viewridge
3 had curb ramps running into them, causing running slopes greater than 2%.

4 147. In September 2015, Defendants failed to maintain the parking
5 spaces marked and reserved for persons with disabilities in compliance with
6 the ADAAG.

7 148. In September 2015, many of the parking spaces marked and
8 reserved for persons with disabilities at Kaiser Viewridge had cross slopes
9 greater than 2%.

10 149. In September 2015, many of the access aisles at Kaiser
11 Viewridge had cross slopes greater than 2%.

12 150. In September 2015, some of the access aisles at Kaiser
13 Viewridge had curb ramps running into them, causing running slopes greater
14 than 2%.

15 151. In October 2015, Defendants failed to maintain the parking
16 spaces marked and reserved for persons with disabilities in compliance with
17 the ADAAG.

18 152. In October 2015, many of the parking spaces marked and
19 reserved for persons with disabilities at Kaiser Viewridge had cross slopes
20 greater than 2%.

21 153. In October 2015, many of the access aisles at Kaiser Viewridge
22 had cross slopes greater than 2%.

23 154. In October 2015, some of the access aisles at Kaiser Viewridge
24 had curb ramps running into them, causing running slopes greater than 2%.

25 155. In December 2015, Defendants failed to maintain the parking
26 spaces marked and reserved for persons with disabilities in compliance with
27 the ADAAG.

28 156. In December 2015, many of the parking spaces marked and

1 reserved for persons with disabilities at Kaiser Viewridge had cross slopes
2 greater than 2%.

3 157. In December 2015, many of the access aisles at Kaiser
4 Viewridge had cross slopes greater than 2%.

5 158. In December 2015, some of the access aisles at Kaiser
6 Viewridge had curb ramps running into them, causing running slopes greater
7 than 2%.

8 159. In January 2016, Defendants failed to maintain the parking
9 spaces marked and reserved for persons with disabilities in compliance with
10 the ADAAG.

11 160. In January 2016, many of the parking spaces marked and
12 reserved for persons with disabilities at Kaiser Viewridge had cross slopes
13 greater than 2%.

14 161. In January 2016, many of the access aisles at Kaiser Viewridge
15 had cross slopes greater than 2%.

16 162. In January 2016, some of the access aisles at Kaiser Viewridge
17 had curb ramps running into them, causing running slopes greater than 2%.

18 163. In March 2016, Defendants failed to maintain the parking
19 spaces marked and reserved for persons with disabilities in compliance with
20 the ADAAG.

21 164. In March 2016, many of the parking spaces marked and
22 reserved for persons with disabilities at Kaiser Viewridge had cross slopes
23 greater than 2%.

24 165. In March 2016, many of the access aisles at Kaiser Viewridge
25 had cross slopes greater than 2%.

26 166. In March 2016, some of the access aisles at Kaiser Viewridge
27 had curb ramps running into them, causing running slopes greater than 2%.

28 167. Currently, Defendants have failed to maintain the parking

1 spaces marked and reserved for persons with disabilities in compliance with
2 the ADAAG.

3 168. Currently, many of the parking spaces marked and reserved for
4 persons with disabilities at Kaiser Viewridge have cross slopes greater than
5 2%.

6 169. Currently, many of the access aisles at Kaiser Viewridge have
7 cross slopes greater than 2%.

8 170. Currently, some of the access aisles at Kaiser Viewridge have
9 curb ramps running into them, causing running slopes greater than 2%.

10 171. Plaintiff visited Kaiser Vandever in February 2014.

11 172. Plaintiff visited Kaiser Vandever in March 2014.

12 173. Plaintiff visited Kaiser Vandever in April 2014.

13 174. Plaintiff visited Kaiser Vandever in May 2014.

14 175. Plaintiff visited Kaiser Vandever in June 2014.

15 176. Plaintiff visited Kaiser Vandever in July 2014.

16 177. Plaintiff visited Kaiser Vandever in August 2014.

17 178. Plaintiff visited Kaiser Vandever in September 2014.

18 179. Plaintiff visited Kaiser Vandever in October 2014.

19 180. Plaintiff visited Kaiser Vandever in November 2014.

20 181. Plaintiff visited Kaiser Vandever in December 2014.

21 182. Plaintiff visited Kaiser Zion in April 2014.

22 183. Plaintiff visited Kaiser Zion in May 2014.

23 184. Plaintiff visited Kaiser Mission Gorge in April 2014.

24 185. Plaintiff visited Kaiser Mission Gorge in November 2014.

25 186. Plaintiff visited Kaiser Mission Gorge in December 2014.

26 187. Plaintiff visited Kaiser Viewridge in February 2015.

27 188. Plaintiff visited Kaiser Viewridge in March 2015.

28 189. Plaintiff visited Kaiser Viewridge in April 2015.

1 190. Plaintiff visited Kaiser Viewridge in May 2015.

2 191. Plaintiff visited Kaiser Viewridge in August 2015.

3 192. Plaintiff visited Kaiser Viewridge in September 2015.

4 193. Plaintiff visited Kaiser Viewridge in October 2015.

5 194. Plaintiff visited Kaiser Viewridge in December 2015.

6 195. Plaintiff visited Kaiser Viewridge in January 2016.

7 196. Plaintiff visited Kaiser Viewridge in March 2016.

8 197. Plaintiff personally encountered these violations and they
9 denied him full and equal access and caused him great difficulty and
10 frustration.

11 198. Plaintiff would like to return and patronize Kaiser Vandever but
12 will be deterred from visiting until Defendants cure the violations.

13 199. Plaintiff would like to return and patronize Kaiser Zion but will
14 be deterred from visiting until Defendants cure the violations.

15 200. Plaintiff would like to return and patronize Kaiser Mission Gorge
16 but will be deterred from visiting until Defendants cure the violations.

17 201. Plaintiff would like to return and patronize Kaiser Viewridge but
18 will be deterred from visiting until Defendants cure the violations.

19 202. The violations identified above are easily removed without
20 much difficulty or expense. They are the types of barriers identified by the
21 Department of Justice as presumably readily achievable to remove and, in
22 fact, these barriers are readily achievable to remove. Moreover, there are
23 numerous alternative accommodations that could be made to provide a
24 greater level of access if complete removal were not achievable.

25 203. Additionally, on information and belief, the plaintiff alleges that
26 the failure to remove these barriers was intentional because: (1) these
27 particular barriers are intuitive and obvious; (2) the defendants exercised
28 control and dominion over the conditions at this location and, therefore, the

1 lack of accessible facilities was not an “accident” because, had the
 2 defendants intended any other configuration, they had the means and ability
 3 to make the change.

4 204. Given the obvious and blatant violation, the plaintiff alleges, on
 5 information and belief, that there are other violations and barriers on the site
 6 that relate to his disability. Plaintiff will amend the Complaint to provide
 7 proper notice regarding the scope of this lawsuit once he conducts a site
 8 inspection. However, please be on notice that the plaintiff seeks to have all
 9 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191
 10 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site,
 11 he can sue to have all barriers that relate to his disability removed regardless
 12 of whether he personally encountered them).

13 205. Plaintiff is and has been deterred from returning and
 14 patronizing Kaiser Vandever, Kaiser Zion, Kaiser Mission Gorge, and Kaiser
 15 Viewridge because of his knowledge of the illegal barriers that exist. Plaintiff
 16 will, nonetheless, return to the medical centers to assess ongoing compliance
 17 with the ADA and will return to patronize all four Kaiser locations as a patient
 18 once the barriers are removed.

19

20 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
 21 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 22 Defendants.) (42 U.S.C. section 12101, et seq.)

23 206. Plaintiff re-pleads and incorporates by reference, as if fully set
 24 forth again herein, the allegations contained in all prior paragraphs of this
 25 complaint.

26 207. Under the ADA, it is an act of discrimination to fail to ensure
 27 that the privileges, advantages, accommodations, facilities, goods and
 28 services of any place of public accommodation is offered on a full and equal

1 basis by anyone who owns, leases, or operates a place of public
 2 accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter
 3 alia, as follows:

- 4 a. A failure to make reasonable modifications in policies, practices,
 5 or procedures, when such modifications are necessary to afford
 6 goods, services, facilities, privileges, advantages, or
 7 accommodations to individuals with disabilities, unless the
 8 accommodation would work a fundamental alteration of those
 9 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 10 b. A failure to remove architectural barriers where such removal is
 11 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 12 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
 13 Appendix “D.”
- 14 c. A failure to make alterations in such a manner that, to the
 15 maximum extent feasible, the altered portions of the facility are
 16 readily accessible to and usable by individuals with disabilities,
 17 including individuals who use wheelchairs or to ensure that, to
 18 the maximum extent feasible, the path of travel to the altered
 19 area and the bathrooms, telephones, and drinking fountains
 20 serving the altered area, are readily accessible to and usable by
 21 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

22 208. A public accommodation shall make reasonable modifications
 23 in policies, practices, or procedures, when the modifications are necessary to
 24 afford goods, services, facilities, privileges, advantages, or accommodations
 25 to individuals with disabilities, unless the public accommodation can
 26 demonstrate that making the modifications would fundamentally alter the
 27 nature of the goods, services, facilities, privileges, advantages, or
 28 accommodations. 28 C.F.R. § 36.302(a).

1 209. Here, the failure to put in place a policy, practice or procedure
 2 regarding staffing of disabled transaction counters at Kaiser Vandever is a
 3 violation of the ADA.

4 210. Here, the failure to put in place a policy, practice or procedure
 5 regarding staffing of disabled transaction counters at Kaiser Zion is a
 6 violation of the ADA.

7 211. In areas used for transactions where counters have cash registers
 8 and are provided for sales or distribution of goods or services to the public, at
 9 least one of each type shall have a portion of the counter which is at least 36
 10 inches in length with a maximum height of 36 inches above the floor. 1991
 11 Standards § 7.2(1). Under the 2010 Standards, where the approach to the
 12 sales or service counter is a parallel approach, such as in this case, there must
 13 be a portion of the sales counter that is no higher than 36 inches above the
 14 floor and 36 inches in width and must extend the same depth as the rest of
 15 the sales or service counter top. 2010 Standards § 904.4 & 904.4.1.

16 212. Here, no such accessible cashier counter or a lowered, 36-inch
 17 counter has been provided at Kaiser Zion in violation of the ADA.

18 213. Any business that provides parking spaces must provide
 19 accessible parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208.
 20 To qualify as a reserved handicap parking space, the space must be properly
 21 marked and designated. Under the ADA, the method, color of marking, and
 22 length of the parking space are to be addressed by state or local laws or
 23 regulations. See 36 C.F.R., Part 1191, § 502.3.3. Under the California
 24 Building Code, to properly and effectively reserve a parking space for persons
 25 with disabilities, each parking space must be at least 216 inches in length.
 26 CBC § 11B-502.2. The access aisle must extend the full length of the parking
 27 spaces it serves. 2010 Standards § 502.3.2. Under the California Building
 28 Code, to properly and effectively reserve a parking space for persons with

1 disabilities, each such space must be identified with a reflectorized sign
 2 permanently posted adjacent to and visible from each stall or space. CBC §
 3 1129B.4. The sign must consist of the International Symbol of Accessibility
 4 (♿) in white on a blue background. *Id.* It cannot be smaller than 70 square
 5 inches and must be mounted so that there is a minimum of 80 inches from
 6 the bottom of the sign to the parking space. *Id.* Signs must be posted so that
 7 they cannot be obscured by a vehicle parking in the space. *Id.* An additional
 8 sign or additional language below the symbol of accessibility must state,
 9 “Minimum Fine \$250” to ensure that the space remains available for persons
 10 with disabilities. *Id.* Another sign must be posted in a conspicuous place at
 11 the entrance to the parking lot or immediately adjacent to each handicap
 12 parking space, with lettering 1 inch in height, that clearly and conspicuously
 13 warn that unauthorized vehicles parking in the handicap parking spaces can
 14 be towed at the owner’s expense. *Id.*

15 214. The failure to provide proper signage at Kaiser Zion is a violation
 16 of the ADA.

17 215. The failure to provide parking measuring at least 216 inches in
 18 length at Kaiser Viewridge is a violation of the ADA.

19 216. The failure to provide access aisles measuring at least 216
 20 inches in length at Kaiser Viewridge is a violation of the ADA.

21 217. Under the 1991 Standards, parking spaces and access aisles
 22 must be level with surface slopes not exceeding 1:50 (2%) in all directions.
 23 1991 Standards § 4.6.3. Here, the access aisle is not level and has a ramp
 24 taking up part of the access aisle. Under the 2010 Standards, access aisles
 25 shall be at the same level as the parking spaces they serve. Changes in level
 26 are not permitted. 2010 Standards 502.4. “Access aisle are required to be
 27 nearly level in all directions to provide a surface for wheelchair transfer to
 28 and from vehicles.” 2010 Standards § 502.4 Advisory. Specifically, built up

1 curb ramps are not permitted to project into access aisles and parking spaces.

2 *Id.* No more than a 1:48 slope is permitted. 2010 Standards § 502.4.

3 218. The failure to provide level parking at Kaiser Zion is a violation
4 of the ADA.

5 219. The failure to provide level parking at Kaiser Mission Gorge is a
6 violation of the ADA.

7 220. The failure to provide level parking at Kaiser Viewridge is a
8 violation of the ADA.

9 221. A public accommodation must maintain in operable working
10 condition those features of its facilities and equipment that are required to be
11 readily accessible to and usable by persons with disabilities. 28 C.F.R. §
12 36.211(a).

13 222. Here, the failure to ensure that the accessible facilities were
14 available and ready to be used by the plaintiff is a violation of the law.

15

**16 II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
17 RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
18 Code § 51-53.)**

19 223. Plaintiff re-pleads and incorporates by reference, as if fully set
20 forth again herein, the allegations contained in all prior paragraphs of this
21 complaint.

22 224. Because the defendants violated the plaintiff's rights under the
23 ADA, they also violated the Unruh Civil Rights Act and are liable for
24 damages. (Cal. Civ. Code § 51(f), 52(a).)

25 225. Because the violation of the Unruh Civil Rights Act resulted in
26 difficulty, discomfort or embarrassment for the plaintiff, the defendants are
27 also each responsible for statutory damages, *i.e.*, a civil penalty. (Civ. Code §
28 55.56(a)-(c).)

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PRAYER:

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Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

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1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

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2. Damages under the Unruh Civil Rights Act and/or the California Disabled Persons Act, which provide for actual damages and a statutory minimum of \$4,000.

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3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

14

15

Dated: May 27, 2016

CENTER FOR DISABILITY ACCESS

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By: /s/ Mark Potter
Mark Potter, Esq.
Attorneys for Plaintiff

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